

STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF MINNEHAHA     )

IN CIRCUIT COURT  
  
SECOND JUDICIAL CIRCUIT

IJK, LLC, dba EASTWOLD SMOKE SHOP,  
Plaintiff,

vs.

LEGACY DEVELOPMENT &  
CONSULTING COMPANY, LLC;  
AARON HULTGREN, HULTGREN  
CONSTRUCTION, LLC; BOOMERANG  
INVESTMENTS, LLC; CLP  
INVESTMENTS, LLC; OLYMPIA REAL  
ESTATE HOLDINGS, LLC; AND RISE  
STRUCTURAL ASSOCIATES, INC.,  
Defendants.

49 CIV. 18-  
  
**COMPLAINT**

Comes now Plaintiff, IJK, LLC dba, Eastwold Smoke Shop, ( "Plaintiff"), by and through its counsel of record, Steven J. Morgans of Myers Billion LLP, and for its Complaint against Defendants, Legacy Development & Consulting Company, LLC, ("Legacy") Aaron Hultgren ("Hultgren"), Hultgren Construction, LLC, ("Hultgren Construction"), Boomerang Investments, LLC ("Boomerang"), CLP Investments, LLC ("CLP"), Olympia Real Estate Holdings, LLC ("Olympia") and RISE Structural Associates, Inc. ("RISE") (collectively, "Defendants") states and allege as follows:

#### **THE PARTIES**

1. Plaintiff, IJK, LLC dba Eastwold Smoke Shop, is a South Dakota limited liability company with its principal place of business located at 201 E. 11<sup>th</sup> St., Sioux Falls, SD 57104.
2. Defendant Legacy is a South Dakota limited liability company with its principal place of business located at 101 South Main Avenue, Suite 400, Sioux Falls, SD 57104.

3. Defendant Hultgren is a resident of Sioux Falls, South Dakota.
4. Defendant Hultgren Construction is a South Dakota limited liability company with its principal place of business located at 101 South Main Avenue, Suite 400, Sioux Falls, SD 57104.
5. Defendant Boomerang is a South Dakota limited liability company with its principal place of business located at 101 South Main Avenue, Suite 400, Sioux Falls, SD 57104.
6. Defendant CLP is a South Dakota limited liability company with its principal place of business located at 101 South Main Avenue, Suite 400, Sioux Falls, SD 57104.
7. Defendant Olympia is a South Dakota limited liability company with its principal place of business located at 101 South Main Avenue, Suite 400, Sioux Falls, SD 57104.
8. Defendant RISE is a South Dakota limited liability company with its principal place of business located at 101 Railroad Avenue, Harrisburg, SD 57032.
9. Upon information and belief, Hultgren is, or was at all relevant times, a member-manager of Legacy, Hultgren Construction, Boomerang, CLP, and Olympia.

#### **JURISDICTION**

10. This Court has jurisdiction over this matter pursuant to SDCL § 15-7-2.
11. Venue is proper in this Court pursuant to SDCL §§ 15-5-6.

#### **FACTS**

12. On or about September 30, 2016, Plaintiff IJK, LLC entered into a lease agreement with CLP ("Lease Agreement") to rent the South Half (S 1/2) of Lot Nine (9) in Block Twenty-One (21) of J. L. Phillips Addition to the City of Sioux Falls, Minnehaha County, South Dakota.
13. Plaintiff continued to be a renter of the premises under the Lease Agreement through the date of December 02, 2016.

14. On or about November 30, 2016, the building where Plaintiff was conducting business as Eastwold Smoke Shop, the real property located at 112 E 10<sup>th</sup> Street, described as the South Half (S ½) of Lot Nine (9) in Block Twenty-One (21) of J. L. Phillips Addition to the City of Sioux Falls, Minnehaha County, South Dakota (“Copper Lounge”), was conveyed by CLP via warranty deed to Boomerang.

15. On or about November 30, 2016, Olympia conveyed to Boomerang via warranty deed certain real property described as Lot 8 and the North Half (N ½) of Lot 9, both in Block 21 of J. L. Phillips Addition to Sioux Falls, Minnehaha County, South Dakota (“Skelly’s”).

16. Legacy held itself out to the public as the owner of the Copper Lounge and/or Skelly’s building at various material times.

17. Defendants Boomerang, CLP, Olympia, and Legacy initiated and engaged in a construction project involving the Copper Lounge and Skelly’s buildings which involved the demolition of the load-bearing wall shared by the two buildings (the “Project”) with Legacy serving as the Project’s developer.

18. Upon information and belief, Hultgren Construction was formed at the urging of Legacy’s principals to act as the general contractor for projects in which Legacy was the developer in an effort to cut costs.

19. Aaron Hultgren acted as an agent of Hultgren Construction, Legacy, Boomerang, CLP and Olympia in all of his actions related to the Project.

20. Hultgren Construction and each of its employees and agents lacked the experience, training and competence to perform the construction services that it was hired to perform on the Project in a reasonable and safe manner.

21. Legacy, Boomerang, CLP and Olympia knew, or should have known, that Hultgren Construction lacked the experience, training and competence to perform the construction services that it was hired to perform on the Project in a reasonable and safe manner.

22. Legacy, Boomerang, CLP and Olympia lacked the experience, training and competence to manage and oversee the work performed by Hultgren Construction on the Project.

23. The construction work associated with the Project as conducted by Defendants' presented significant risks of physical injury and property damage to Plaintiff, its employees and customers.

25. In or around the fall of 2016, Hultgren Construction began demolition of the load-bearing wall between the Copper Lounge and Skelly's buildings.

26. Upon information and belief, Defendants did not ensure the demolition activities related to the load-bearing wall were carried out with sufficient safety precautions or that proper shoring mechanisms were used during demolition.

27. Upon information and belief, RISE was the structural engineer for the Project, and Legacy, Hultgren, and Hultgren Construction consulted with RISE in regard to the Project, and RISE advised Legacy, Hultgren, and Hultgren Construction in regard to safety precautions and shoring mechanisms for the demolition of the load-bearing wall.

28. Through RISE's performance of services associated with the Project, it knew or should have known of the insufficient safety precautions and shoring mechanisms in place for the demolition of the load-bearing wall and the associated risks of the same.

29. Despite such knowledge, RISE took no action to warn Plaintiff of others of the significant dangers and risks posed to them by the continued construction and demolition activities.

30. Despite being alerted to the presence of cracks in the apartment above the Project on the load-bearing wall and being aware of the dangerous nature of the manner in which the load-bearing wall was being demolished, none of the Defendants took any action to investigate the cracks or take any other remedial action.

31. On the morning of December 2, 2016, Copper Lounge and Skelly's collapsed as a result of the demolition of the load-bearing wall shared by the two buildings.

32. Within a couple days after the collapse of The Copper Lounge portion of the building IJK, LLC was advised to remove its property from the Eastwold Smoke Shop located at 112 E. 10<sup>th</sup> Street.

33. The Lease Agreement at issue provided that the landlord had a right to terminate the lease in the event of damage or destruction to the leased premises, but only if (75%) of the Leased Premises was untenable.

34. Upon information and belief, the landlord either requested the demolition or allowed the demolition of the Leased Premises even though Leased Premises was not (75%) untenable.

35. Plaintiff suffered damages including, but not limited to, lost income in the past, inventory losses, incurred additional expenses, business interruption expenses, and will continue to suffer lost income damages into the future as the result of the building collapse and resulting demolition of the building where Plaintiff transacted business pursuant to the Lease Agreement.

36. In addition, Plaintiff has come to learn that its principals, employees, and customers were exposed to asbestos due to the improper and illegal removal of asbestos by certain Defendants from the building as part of the Project.

## **COUNT ONE--LANDOWNER NEGLIGENCE**

**(Defendants Legacy, Boomerang, CLP and Olympia)**

37. Plaintiff realleges the above-stated paragraphs as if fully set forth herein.

38. Defendants Legacy, Boomerang, CLP and Olympia owned all or portions of the Copper Lounge and Skelly's buildings while construction work was negligently being performed in such buildings.

39. Defendants Legacy, Boomerang, CLP and Olympia, as landowners, owed a duty to Plaintiff to maintain the subject buildings in a reasonably safe condition, to use reasonable care in any operations conducted in the buildings and to warn Plaintiff of any latent and dangerous conditions on the properties.

40. Defendants Legacy, Boomerang, CLP and Olympia breached their duty to Plaintiff by failing to prevent or timely cure the dangerous condition created by the removal of the load-bearing wall with inadequate shoring and by failing to warn Plaintiff of such dangerous condition.

41. As a direct and proximate cause of Defendants' Legacy, Boomerang, and CLP and Olympia's breach, Plaintiff sustained damages.

## **COUNT TWO--LANDLORD LIABILITY (COMMON LAW)**

**(CLP and Boomerang)**

42. Plaintiff realleges the above-stated paragraphs as if fully set forth herein.

43. Plaintiff entered into a lease with CLP pursuant to the terms of the Lease Agreement. Unbeknownst to Plaintiff, such lease was assigned to Boomerang on November 30, 2016.

44. As Plaintiff's landlords, CLP and Boomerang owed duties of care to Plaintiff to maintain the leased premises in a reasonable and safe manner, to use reasonable care in

conducting construction and other operations on the building in which the leased premises was located and warn Plaintiff of any latent and dangerous condition impacting the leased premises.

45. CLP and Boomerang breached such duties to Plaintiff by failing to prevent or timely cure the dangerous condition created by the removal of the load-bearing wall with inadequate shoring and by failing to warn Plaintiff of such dangerous condition.

46. As a direct and proximate cause of the negligence of CLP and Boomerang, Plaintiff sustained damages as set out above.

### **COUNT THREE--NEGLIGENT HIRING**

(Legacy, Boomerang, CLP and Olympia)

47. Plaintiff realleges the above-stated paragraphs as if fully set forth herein.

48. Hultgren and Hultgren Construction were hired by Legacy, Boomerang, CLP and/or Olympia to perform construction services related to the Project.

49. Hultgren and Hultgren Construction lacked the experience, training and competence to safely perform the construction services it was hired to perform related to the Project.

50. Legacy, Boomerang, CLP and Olympia knew or should have known that Hultgren and Hultgren Construction lacked the experience, training and competence to safely perform the construction services it was hired to perform related to the Project.

51. Legacy, Boomerang, CLP and Olympia each owed a duty to Plaintiff to hire a competent contractor to perform construction services related to the Project as Plaintiff could foreseeably suffer damages by a failure to do so.

51. Legacy, Boomerang, CLP and Olympia breached this duty by hiring Hultgren and Hultgren Construction.

52. As a direct and proximate cause of the negligence of Legacy, Boomerang, CLP and Olympia, Plaintiff sustained damages.

**COUNT FOUR--NEGLIGENT CONSTRUCTION AND SURPERVISION**

(Hultgren, Hultgren Construction, Legacy, Boomerang, CLP and Olympia)

53. Plaintiff realleges the above-stated paragraphs as if fully set forth herein.

54. Defendants identified in Count Four owed a duty of care to Plaintiff to perform construction services related to the Project with the skill and care ordinarily and reasonably exercised by others in the construction profession and to supervise and oversee such work to ensure that it was performed in such manner.

55. Defendants breached such duties resulting in the collapse and complete destruction of the subject buildings, and the subsequent demolition of the Leased Premises.

56. As a direct and proximate cause of the negligence stated in Count Four, Plaintiff sustained injuries and damages as set out above.

**COUNT FIVE—NEGLIGENCE**

(Rise)

57. Plaintiff realleges the above-stated paragraphs as if fully set forth herein.

58. RISE owed Plaintiff a duty to provide professional engineering services relative to the Project with the skill and care ordinarily and reasonably exercised by others in the engineering profession as it was or should have been foreseeable to RISE that Plaintiff could have suffered damages by its failure to do so.

59. RISE had a duty to take reasonable precautions to prevent injuries or damages to Plaintiff and to warn Plaintiff of any condition known to RISE that presented an unreasonable risk of harm to Plaintiff.



60. RISE breached such duties by negligently providing engineering services related to the Project, failing to warn Plaintiff of dangerous conditions that posed an unreasonable risk of harm and failing to remedy such conditions.

61. As a direct and proximate cause of the negligence of RISE, Plaintiff sustained injuries and damages as set out above.

## **COUNT SIX--BREACH OF CONTRACT**

(CLP and Boomerang)

62. Plaintiff realleges the above-stated paragraphs as if fully set forth herein.

63. Plaintiff and CLP entered into a lease agreement relative to the property described as the South Half (S ½) of Lot Nine (9) in Block Twenty-One (21) of J. L. Phillips Addition to the City of Sioux Falls, Minnehaha County, South Dakota ("Copper Lounge") located at 112 E. 10<sup>th</sup> Street.

64. Pursuant to such Lease Agreement, CLP agreed to provide Plaintiff with a habitable space to operate its business during the term of the lease.

65. Pursuant to such lease agreement, CLP agreed to "keep the foundation, exterior walls and roof" of the building "in good condition and repair".

66. CLP and/or Boomerang failed to comply with their obligations under the Lease Agreement by failing to keep the building in good condition and repair when notified of cracks in the walls of the apartment rented by the Fodness family, and allowing the building to collapse, thereby causing damages to Plaintiff during the term of the lease.

67. CLP and/or Boomerang also failed to comply with their obligations under the Lease Agreement by unilaterally demolishing or allowing the demolition of the Leased Premises in violation of the terms of Paragraph 17 of the Lease Agreement in that 75% of the Leased Premises was not untenable.

68. CLP and Boomerang's failures, actions, and inactions, as identified above, constituted material breaches of the Lease Agreement.

69. Plaintiff has suffered damages, including consequential damages, as a result of CLP and Boomerang's breach of contract.

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief to Plaintiff:

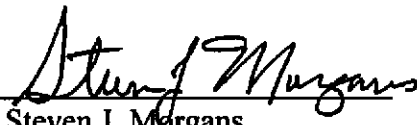
1. Judgment against Defendants, joint and severally, on all Counts alleged herein and in the amount of general and special damages to be determined during trial plus interest, costs, and attorneys' fees;

2. For such other and further relief, including equitable relief, as the Court deems just and equitable.

**TRIAL BY JURY IS HEREBY DEMANDED ON ALL ISSUES**

Dated this 5<sup>th</sup> day of April, 2018.

**MYERS BILLION, LLP**

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